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Supreme Court, U.S.
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No. 96-246

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

THOMAS HEDDEN,

Petitioner,

vs.

NATIONAL RAILROAD PASSENGER CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CORRECTED RESPONDENT'S BRIEF IN OPPOSITION

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18 pp

LIST OF INTERESTED PARTIES

The petitioner is Thomas Hedden.

The respondent is currently identified in the caption as National Railroad Passenger Corporation. Respondent does business as Amtrak. Christopher J. Hoare, Esquire, of Marshall, Dennehey, Warner, Coleman & Goggin, is counsel of record for respondent.

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent requests that this court deny the Petition for Writ of Certiorari seeking review of an Opinion of the United States Court of Appeals for the Third Circuit. The Opinion of the Third Circuit Court of Appeals was filed on May 12, 1996 (App. 18a) but was not published.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this court under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

Respondent respectfully opposes the Petition for Writ of Certiorari since there has been no showing that this case is of such imperative public importance as to justify deviation from normal appellate practice and to require the immediate determination by this court. See 28 U.S.C. §2101(e). The Third Circuit Court of Appeals' Opinion in this case is not in conflict with the decision of any other United States Court of Appeals. The Third Circuit Court of Appeals' Opinion has not so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's supervisory power. In addition, the Third Circuit Court of Appeals' Opinion does not conflict with the relevant decisions by this court on the federal law in question.

A. Course of Proceedings and Disposition of the Case Below.

Petitioner first filed this case in the Court of Common Pleas of Allegheny County, Pennsylvania on March 25, 1993 in the case of Thomas P. Hedden v. Amtrak (CCP Allegheny County GD93-5251). Respondent filed Preliminary Objections to venue in the Court of Common Pleas of Allegheny County, Pennsylvania. Respondent's Preliminary Objections to venue were pending at the time petitioner voluntarily dismissed his state court action and refiled this case in the United States District Court for the Eastern District of Pennsylvania, Philadelphia, Pennsylvania on October 25, 1993. Petitioner had alleged injury occurring while at work in a rail yard in Long Island City, Queens, New York. Petitioner alleged that respondent violated the Federal Employers Liability Act, 45 U.S.C. §51 ("FELA").

From October 25, 1993 when petitioner refiled his suit in the United States District Court until January 11, 1995, respondent had engaged in discovery, retained an expert witness, prepared for trial, prepared Motions for Summary Judgment, Pre-Trial Memoranda, Motions in Limine and Answers to petitioner's various Motions. The United States District Court denied petitioner's Motion for Voluntary Dismissal on January 11, 1995.

> The plaintiff has failed to show favorable terms under which his request for approval of his voluntary dismissal may be conditioned, it is hereby ordered that the Motion is denied.

A copy of the court's January 11, 1995 Order denying petitioner's Motion for Voluntary Dismissal is attached at App. 27(a).

Petitioner appealed, inter alia, the District Court's denial of his Motion for Voluntary Dismissal to the United States Court of Appeals for the Third Circuit. In its

Opinion, the Third Circuit Court of Appeals affirmed the District Court's denial of petitioner's Motion for Voluntary Dismissal (App. 22(a)). The Third Circuit Court of Appeals found compelling the fact that petitioner had previously voluntarily dismissed his lawsuit where it had been filed in state court. The Third Circuit Court of Appeals also noted the period of a year and three months during which the respondent had engaged in discovery, retained an expert witness, prepared for trial, prepared Motions for Summary Judgment, Pre-Trial Memoranda, Motions in Limine and Answers to petitioner's Motions.

> It is thus clear that the defendant would suffer prejudice had the District Court allowed yet another voluntary dismissal this far into the litigation. Thus, we do not think that the District Court abused its discretion in denying the Motion for Voluntary Dismissal.

(App. 22(a)).

The United States Court of Appeals for the Third Circuit affirmed all of the rulings of the District Court below.

B. Correction of Misstatements in the Petition.

The Opinion of the United States Court of Appeals for the Third Circuit correctly sets forth the facts of this case. (App. 18(a) - 25(a)). The Opinion accurately reflects the Third Circuit's careful consideration of the case law and procedural history of this case in affirming the District Court's denial of petitioner's Motion for Voluntary Dismissal. In the interest of making this Brief truly brief, respondent respectfully directs this court's attention to the Appellate Court's Opinion.

Pursuant to United States Supreme Court Rule 15.1, respondent brings the misstatements of facts contained in the Petition to the court's attention.

Petitioner misrepresents to this court that the events from which petitioner's alleged injuries arose occurred in

eastern Pennsylvania. (Petition at p. 5.) Petitioner was actually working in Long Island City, Queens, New York, at the time he alleges he was injured.

Petitioner further states that petitioner was injured on August 11, 1992 while pulling a heavy railroad tie from a bed of gravel and mud underneath a railroad track rail during the course and scope of his employment. Actually, petitioner testified at trial that he was not sure whether his injury occurred while he was pulling the old railroad tie out from beneath the rail or carrying it to the side of the tracks. Petitioner continued working and inserted a brand new tie underneath the same rail before complaining to anyone.

Petitioner states that there was evidence to suggest that machines were available in the area where plaintiff was employed that could be used to aid in the removal of railroad ties but petitioner's supervisor, Joseph Hoffman, did not use the equipment available to the crew on the day

in question. On the contrary, mechanized equipment was not practical at the location in question. Testimony at trial supported the decision to remove ties in two-man teams because the use of mechanized equipment would necessitate removing a busy track from service.

Petitioner incorrectly suggests that respondent concealed an AAR "ergonomic study" from petitioner although petitioner's Interrogatory No. 65 would have described such a study with sufficient particularity as to require respondent to disclose it. (Petition at pp. 5-6.) On the contrary, respondent did not conceal any document from petitioner, particularly documents that were not generated by the respondent but were generated by a third entity, the American Association of Railroads. Respondent in no way interfered with petitioner's access to the records of a third party. Respondent was not aware of a study that apparently was reviewed by one of its employees. (Petitioner's Interrogatory.) The District Court correctly

identified the lack of prejudice to the petitioner when it ruled that petitioner had received the study in plenty of time to explore its content, interpret its meaning and retain an expert to introduce at the time of trial. Petitioner failed to demonstrate the role of the respondent in interfering with petitioner's access to this document or demonstrate why more discovery was required. Petitioner did not subpoena the respondent's employee to trial and petitioner did not present an expert at trial to introduce the study into evidence.

REASONS FOR DENYING THE WRIT

I. THE JUDGMENT OF THE DISTRICT COURT AND ITS AFFIRMANCE BY THE COURT OF APPEALS ARE IN ACCORD WITH THE DECISIONS OF THIS HONORABLE COURT.

Petitioner has misapplied the decisions of this court and the various Court of Appeals in order to argue that the previous decisions rendered in this case are inconsistent with established case law. Petitioner, dissatisfied with the result below, asks this Honorable Court to "second guess the Third Circuit Court of Appeals so that he may attempt once again to recover."

Petitioner's Brief raises no important question of constitutional law or presents any compelling conflict that requires this Honorable Court's supervisory instruction.

Petitioner presents no new issue of review that was not adequately presented and ruled upon by the District Court and the Third Circuit Court of Appeals below. By simply repeating the averments advanced before, the

petitioner has not made the requisite showing that the Third Circuit Court of Appeals made an erroneous factual finding or the misapplication of a properly stated rule of law. Supreme Court Rule 10(c).

This Honorable Court has refused in the past to review concurrent findings of fact by two courts below in the absence of very obvious and exceptional showing of error. Goodman v. Lukens Steel Co., 482 U.S. 666, 107 S.Ct. 2617 (1987).

The Third Circuit Court of Appeals properly stated the Federal Rule of Civil Procedure 41 when it considered the District Court's denial of petitioner's Motion for Voluntary Dismissal. The Third Circuit Court of Appeals found that the District Court did not abuse its discretion when it denied petitioner's Motion for Voluntary Dismissal. The Third Circuit Court of Appeals' Opinion noted the length of time that had passed and the various preparations that had been made by the respondent toward

trial between the time petitioner refiled his cause of action in the District Court and then made application to dismiss this case voluntarily. It would require this court's review of factual findings by the Third Circuit Court of Appeals.

CONCLUSION

The Writ of Certiorari should be denied.

Respectfully submitted,

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